

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION

MICHAEL SHAUN SCHAFFRAN

PLAINTIFF

V.

CIVIL ACTION NO: 1:24CV8

HARRISON COUNTY, MISSISSIPPI

DEFENDANT

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TRANSCRIPT OF OMNIBUS HEARING

BEFORE HONORABLE ROBERT P. MYERS, JR.  
UNITED STATES MAGISTRATE JUDGE

AUGUST 12, 2024

DAN M. RUSSELL, JR., UNITED STATES COURTHOUSE  
GULFPORT, MISSISSIPPI

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EXHIBIT "A"

A P P E A R A N C E S

REPRESENTING THE PLAINTIFF:

MICHAEL SHAUN SCHAFFRAN, PLAINTIFF PRO SE

REPRESENTING THE DEFENDANT:

PATRICK TAYLOR GUILD, ESQ.  
Boyce Holleman and Associates, P.A.  
1720 23rd Avenue  
Gulfport, Mississippi 39501

EXHIBIT "A"

1           **THE COURT:** Please be seated.

2           All right. We're here in the matter of Schaffran  
3 versus Harrison County, Mississippi, Cause Number 1:24CV8.  
4 This matter is set for an omnibus hearing.

5           Good morning, Mr. Schaffran. Is that right?

6           **THE PLAINTIFF:** Yes, sir.

7           **THE COURT:** Okay. Good morning, Mr. Guild.

8 Mr. Guild, why don't you introduce yourself for the record  
9 along with your client.

10           **MR. GUILD:** Yes, Your Honor. Patrick Guild here on  
11 behalf of Harrison County, Mississippi.

12           **THE COURT:** Thank you.

13           All right. Mr. Schaffran, I've asked you to join us  
14 here as a result of a lawsuit you have filed. We're going to  
15 go over your entire lawsuit. Have you ever been to a  
16 screening hearing or a Spears hearing such as this before?

17           **THE PLAINTIFF:** No, sir.

18           **THE COURT:** All right. Well, rest easy. I'm going  
19 to explain it to you. You're proceeding in this matter  
20 without payment of costs. That's what we call IFP or in forma  
21 pauperis. You requested to proceed that way, and that's been  
22 granted to you by the Court. That makes your case fall under  
23 the Prison Litigation Reform Act, and that requires the Court  
24 to screen your case. The statute is a little broad, but what  
25 we're supposed to be doing this morning is to determine

1 whether you've stated a claim for relief under 42 USC  
2 Section 1983. What that means in layman's terms is we're  
3 trying to find out about the law and the facts of your case.  
4 You can have the law absolutely perfect on your side, but you  
5 might not have enough facts. Conversely, you might not have  
6 the law, but you have the facts that are perfect on your case.  
7 And so we're trying to determine whether you have enough law  
8 and facts on your case that will allow you to proceed to the  
9 next step. That's what we're going to do here today. Okay?

10 **THE PLAINTIFF:** Okay.

11 **THE COURT:** In order to screen your case, I first  
12 consider what you've said in your complaint, but sometimes, as  
13 you can imagine, the complaints are not absolutely clear. So  
14 what I like to do is to bring the plaintiffs, such as  
15 yourself, into open court and give you an opportunity to tell  
16 me in your own words what your lawsuit is about; in other  
17 words, what you think each defendant has to do with your  
18 lawsuit, why you've sued them, what constitutional rights you  
19 think that they've violated, what your damages are, things  
20 such as that, and I listen to what you have to say and I take  
21 that into consideration along with what you've put into your  
22 complaint, and then I come up with a determination of whether  
23 you have sufficient law and sufficient facts to allow your  
24 lawsuit to proceed.

25 Now, we're going to talk about some things, some

1 procedural things of your case that you may or may not be  
2 aware of. Since I'm required to consider what you have to say  
3 as a supplement to your complaint but not an actual amendment  
4 to your complaint, everything you tell me this morning should  
5 be under oath; so at this time I want you to stand, raise your  
6 right hand, and take the oath from the courtroom deputy.

7 **(Oath administered.)**

8 **THE COURT:** All right. So first of all,  
9 Mr. Schaffran, you have a decision to make. And the decision  
10 that you have to make is whether you want the district judge  
11 to hear your case or whether you want the magistrate judge to  
12 hear your case. Now, I'm the magistrate judge assigned to  
13 your case. Judge McNeel, Taylor McNeel, is the district judge  
14 assigned to your case. Insofar as you're concerned, there's  
15 very little difference between the judges. The rules of  
16 evidence are going to be applied the same whether the district  
17 judge hears it or the magistrate judge. The rules of court,  
18 the Rules of Civil Procedure will be applied the same  
19 regardless of who the judge is, and your right to appeal is  
20 the same regardless of the judge, the only difference being  
21 that sometimes the magistrate judge can get to your case a  
22 little quicker than the district judge. All right?

23 Like I said, I'm the magistrate judge assigned to the  
24 case. I can assure it makes no difference to Judge McNeel and  
25 it makes no difference to me which judge you pick. It's not

1 going to adversely affect the outcome of your case. You're  
2 not going to anger either one of us. We both have plenty of  
3 cases to do.

4 So do you have any questions about the consent  
5 process?

6 **THE PLAINTIFF:** No.

7 **THE COURT:** All right. Do you want to have District  
8 Judge McNeel decide your case, or do you want to have me as  
9 the magistrate judge assigned to your case?

10 **THE PLAINTIFF:** You.

11 **THE COURT:** Okay. And you have that right to do  
12 that. The law says that the consent, because you have to  
13 consent to have the magistrate judge hear the case, it has to  
14 be in writing, so we have a form for that.

15 **THE PLAINTIFF:** Okay.

16 **THE COURT:** So the courtroom deputy is going to bring  
17 you that form. I want you to review it and make sure you  
18 understand it before you read and sign it. But basically it  
19 says you're not waiving any rights; you're just allowing the  
20 magistrate judge to hear your case. Okay, Mr. Schaffran?

21 **THE PLAINTIFF:** Yeah.

22 **THE COURT:** And if you've read it and you understand  
23 it, then you can go ahead and sign it and date it where  
24 appropriate.

25 **THE PLAINTIFF:** To be honest with you, Your Honor, I

1 wasn't even told this is where I was coming, so I didn't bring  
2 my glasses, I didn't bring my paperwork. They just told me,  
3 "You've got court." So I can't -- I can't really see what  
4 this says.

5 **THE COURT:** Okay.

6 **THE PLAINTIFF:** But I trust that it -- so, you know,  
7 if she can point out where I'm supposed to sign, I'll sign it.

8 **(Form read to plaintiff by courtroom deputy clerk.)**

9 **THE COURT:** Thank you for reading the form to him.

10 **THE PLAINTIFF:** Yeah.

11 **THE COURT:** Does Harrison County consent?

12 **MR. GUILD:** Yes, Your Honor.

13 **THE COURT:** All right. Thank you. Please go ahead  
14 and sign the consent.

15 All right. Mr. Schaffran, I've looked over your  
16 complaint, but I'm hoping you can save us a little bit of time  
17 this morning by telling me in your own words what your lawsuit  
18 is about, like we talked about, why you sued Harrison County,  
19 what rights you think they've violated -- you don't have to  
20 name the specific rights -- and what your damages are. You  
21 don't have to go into minute detail, but I'm going to ask you  
22 some questions to kind of lead you through this process. I  
23 want to make sure, though, before I leave here this morning  
24 that I have a very good understanding of what your lawsuit is  
25 about, okay? And once I get through asking questions, it may

1 be that the lawyer for Harrison County, he may have some  
2 questions to ask you, and I want you to extend to him, and I  
3 know you will, the same courtesies that you're extending to  
4 the Court.

5 So why don't we start off with some easy questions.  
6 State your name and your age.

7 **THE PLAINTIFF:** Michael Shaun Schaffran, 45.

8 **THE COURT:** And where are you currently housed?

9 **THE PLAINTIFF:** At the Harrison County Adult  
10 Detention Center.

11 **THE COURT:** Why are you housed there?

12 **THE PLAINTIFF:** For alleged armed robbery.

13 **THE COURT:** Have you gone to trial yet?

14 **THE DEFENDANT:** No, sir.

15 **THE COURT:** When is your trial date?

16 **THE PLAINTIFF:** I have no trial date yet.

17 **THE COURT:** Okay. And how long have you been housed  
18 at Harrison County?

19 **THE PLAINTIFF:** Thirteen months.

20 **THE COURT:** And that's been continuous?

21 **THE PLAINTIFF:** Yes, sir.

22 **THE COURT:** As I appreciate it, you have brought what  
23 we call a conditions of confinement claim against Harrison  
24 County that relates to the presence of black mold. Is that  
25 right?



1           **THE PLAINTIFF:** Yes, sir.

2           **THE COURT:** Do you have any claims other than what we  
3 call conditions of confinement relating to black mold?

4           **THE PLAINTIFF:** No. It's just about that -- that  
5 particular event that's been ongoing, particularly mostly in  
6 one zone of the building I'm housed into. But as soon as I  
7 had started on this, they have moved me to a different zone.

8           **THE COURT:** All right. I guess what I want to make  
9 certain is, do you have any other claims or theories of  
10 recovery other than conditions of confinement relating to the  
11 presence of black mold?

12           **THE PLAINTIFF:** No.

13           **THE COURT:** Okay. And I read in your complaint, I  
14 think, 144, 148, those numbers. Where are you currently  
15 housed in Harrison County?

16           **THE PLAINTIFF:** Now I'm in B Building, A Zone.

17           **THE COURT:** All right. Do you have a cell number or  
18 anything?

19           **THE PLAINTIFF:** Yeah. 207.

20           **THE COURT:** 207. And how long have you been in B  
21 Building, A Zone, Cell 207?

22           **THE PLAINTIFF:** Three months.

23           **THE COURT:** Three months? Okay. And prior to that,  
24 where were you?

25           **THE PLAINTIFF:** B-F.

1           **THE COURT:** So B Building, F Zone?

2           **THE PLAINTIFF:** Yes, sir.

3           **THE COURT:** And do you remember what cell?

4           **THE PLAINTIFF:** Yeah. 148, 248, 246, 245, and trying  
5 to, you know, just find different ways to get -- to clean, and  
6 it would just come right back, you know. It's not just  
7 inmates getting sick. It's staff, too. It's nurses, you  
8 know, and it's like -- so...

9           **THE COURT:** So prior to being in the F Zone in  
10 Building B, were you in a different area?

11          **THE PLAINTIFF:** That and lockdown. That's it.

12          **THE COURT:** Okay.

13          **THE PLAINTIFF:** But in that building, you know.

14          **THE COURT:** So obviously you're talking about black  
15 mold, do you have any black mold currently in Building B, A  
16 Zone, Cell 207?

17          **THE PLAINTIFF:** No, sir.

18          **THE COURT:** All right. So when was the last time you  
19 were exposed to the black mold?

20          **THE PLAINTIFF:** About three months ago.

21          **THE COURT:** And was that when you were F Zone?

22          **THE PLAINTIFF:** Yes.

23          **THE COURT:** All right. And where was the black mold?  
24 Was it in each one of these cells?

25          **THE PLAINTIFF:** Yeah, it, like, comes out of the

1 vents, the window area, you know. It's, like, on the ceiling.  
2 And they came in to clean it and threw bleach powder, and it  
3 just came right back through the bleach powder.

4 **THE COURT:** Who came in to clean it?

5 **THE PLAINTIFF:** A maintenance crew.

6 **THE COURT:** When did the maintenance crew clean it,  
7 if you remember?

8 **THE PLAINTIFF:** I don't know exactly when, but it  
9 was, like, about the beginning of me filing all the paperwork.

10 **THE COURT:** And it looks like your complaint was  
11 filed in January of this year.

12 **THE PLAINTIFF:** This was probably about February.

13 **THE COURT:** So February of '24?

14 **THE PLAINTIFF:** Yes, sir.

15 **THE COURT:** So they came in and cleaned it, or tried  
16 to, in February of '24 with bleach powder?

17 **THE PLAINTIFF:** Yeah, inside -- and they had a little  
18 pump sprayer and like a little toilet brush.

19 **THE COURT:** All right. So they came in with a pump  
20 sprayer and toilet brush?

21 **THE PLAINTIFF:** Yeah.

22 **THE COURT:** And they were scrubbing it?

23 **THE PLAINTIFF:** Right. And if you go to B-F on the  
24 upstairs by the window or on the bottom by the window, you  
25 would -- you could see it, because it's still -- still there,

1 you know, like, so...

2 **THE COURT:** Was this the only occasion that they  
3 attempted to clean the mildew or the mold?

4 **THE PLAINTIFF:** Yes. Just one time.

5 **THE COURT:** Does the jail provide with you cleaning  
6 products from time to time?

7 **THE PLAINTIFF:** Yeah, they --

8 **THE COURT:** Brushes and soap and --

9 **THE PLAINTIFF:** With a mop bucket and a -- and a  
10 broom and a little bucket with cleaner in it to clean your  
11 toilet. But that's...

12 **THE COURT:** How often do they give you those cleaning  
13 supplies?

14 **THE PLAINTIFF:** Twice a week.

15 **THE COURT:** Okay. So are you able to mop and brush?  
16 And you have a rag, I guess? They give you a rag? Or do you  
17 have some --

18 **THE PLAINTIFF:** You get a rag, yeah. It's like the  
19 only thing you get is your face towel, and they -- there's no  
20 real way -- because, like, say this is the room right here  
21 before you come in the door, and you look, you can see it just  
22 like right across the wall. And you'll wipe it, right, with a  
23 cleaner, and then it will be right back the next day, you  
24 know. And everybody's -- I don't know. It's like they try to  
25 say, oh, we've got COVID or something. It's not. It's coming

1 through the vents. You know, you can smell like the mildew,  
2 moisture, so...

3 **THE COURT:** Has anybody told you why there's  
4 the presence of mildew or moisture?

5 **THE PLAINTIFF:** They say it's mildew coming from the  
6 moisture and stuff. But it's only in certain spots. So that  
7 -- and it's not like I'm saying, oh, whoa is me because I'm  
8 locked up. I'm locked up because I did something wrong. It  
9 ain't got nothing to do with that. I'm not trying to get out  
10 of anything that I've done or any of this stuff. I'm just  
11 saying that this right here is, like, you know, something  
12 that's got people that are continuously sick. And then you go  
13 to medical and they charge you ten dollars every time, boom,  
14 ten dollars every time. You know, it's like...

15 **THE COURT:** Do you have a history of sinus  
16 infections?

17 **THE PLAINTIFF:** No.

18 **THE COURT:** What damages are you claiming in this  
19 lawsuit?

20 **THE PLAINTIFF:** Sometimes all of a sudden, like my  
21 breath just gets taken away, like. I feel like -- I don't  
22 know if you've inhaled anything, like a piece of cake or  
23 something got into your throat area and -- and it's just --  
24 and then the sweats. It's -- I went to medical about it, and  
25 they're like -- and then talking about following up and, you

1 know...

2 **THE COURT:** Has any doctor or nurse or nurse  
3 practitioner, any medical provider told you that the problems  
4 you're having are caused by the presence of mold or mildew in  
5 your cell?

6 **THE PLAINTIFF:** No. It seems like every time I talk  
7 about it to the medical, they figure out a way to, you know,  
8 detour the conversation into something else, and it's just --  
9 you know, oh, we'll put you on -- they'll give me a Claritin,  
10 like, and I'll take that for like seven to ten days, depending  
11 on how long they put it there, and just...

12 **THE COURT:** Does it help?

13 **THE PLAINTIFF:** The Claritin? I mean --

14 **THE COURT:** Yes, sir.

15 **THE PLAINTIFF:** -- not really. I mean, because  
16 it's -- it's -- I don't have a sinus infection.

17 **THE COURT:** Well, you told me that you have like a --  
18 I guess a tickle in your throat.

19 **THE PLAINTIFF:** Yeah.

20 **THE COURT:** What other symptoms, if any, are you  
21 having other than that tickle in your throat?

22 **THE PLAINTIFF:** Like sometimes I -- my breath gets  
23 taken away. Like, I don't know what it is. It's just,  
24 like...

25 **THE COURT:** Okay.

1           **THE PLAINTIFF:** So, like, I don't know how to explain  
2 it, really.

3           **THE COURT:** Any symptoms other than your breath being  
4 taken away and a tickle in your throat?

5           **THE PLAINTIFF:** Sometimes headaches. But I can't  
6 actually say that that has to do with what I have put in this  
7 complaint about, because I drink coffee, you know, and if I  
8 don't have coffee, I'll have headaches. So I can't really...

9           **THE COURT:** We all get those as coffee drinkers, so I  
10 understand how that is.

11           **THE PLAINTIFF:** Yeah.

12           **THE COURT:** When is the last time you saw anybody for  
13 shortness of breath or breathing problems or a tickle in your  
14 throat?

15           **THE PLAINTIFF:** A little bit before they changed over  
16 to this new, like, I guess in-house mailing system thing  
17 called City Tele Coin. So now, like, I don't know, the way  
18 that the medical goes, it's kind of -- it's like you don't  
19 know if they seen your message or not anymore.

20           **THE COURT:** Okay. Has anyone told you that it's not  
21 black mold?

22           **THE PLAINTIFF:** Yeah, maintenance did. They said  
23 that it was mildew.

24           **THE COURT:** Did they give you a reason why they know  
25 it's mildew and not black mold?

1                   **THE PLAINTIFF:** No.

2                   **THE COURT:** Okay. Do you have an understanding of  
3 the difference between mildew and black mold?

4                   **THE PLAINTIFF:** I'm not, like, an expert on this, but  
5 I have -- because I have done, like, construction with  
6 demolition where there -- that type of stuff has been in  
7 places that got condemned, you know, and -- but...

8                   **THE COURT:** But as far as looking at a fungus that's  
9 black, do you know if there's a difference between mildew  
10 versus black mold?

11                   **THE PLAINTIFF:** Well, for -- like from my  
12 understanding, the difference is one would be clear and shiny;  
13 the other would be, like, furry, like, you know, like a -- you  
14 know, and it would start to overtake itself, you know, like --  
15 I don't know how to say, stack maybe? But...

16                   **THE COURT:** Okay. So you think you can look at it  
17 and tell the difference with the naked eye?

18                   **THE PLAINTIFF:** Well, first off, if I don't have my  
19 glasses on, I can't see nothing at all.

20                   **THE COURT:** Well, with your glasses on. Fair enough.  
21 I'm with you.

22                   **THE PLAINTIFF:** But, you know, I would like to say  
23 that I don't know how to answer that question.

24                   **THE COURT:** Okay. So you may not know the difference  
25 between mildew and black mold?



1           **THE PLAINTIFF:** Right. But this is what makes me  
2 figure there's a difference: When there's the commotion about  
3 it, you know. Like if I talk about -- like say for instance  
4 he's the builder of this microphone, right? And I'm like,  
5 "Oh, it ain't got the cotton thing on it," and Officer Edwards  
6 is over there like, "Yeah, it does. I can see it from here."  
7 But because I can't see, you know, that's what I'm...

8           **THE COURT:** Okay. All right. Anything else that we  
9 need to talk about on your lawsuit that you've filed here  
10 today?

11           **THE PLAINTIFF:** Sir?

12           **THE COURT:** Anything else that we've not talked about  
13 that we need to talk about for your lawsuit today?

14           **THE PLAINTIFF:** Well, yeah. I want to -- on the  
15 relief part, I put a million dollars, but that's not what I'm  
16 trying to -- I was trying to get whatever it takes to  
17 sandblast and kills and repaint the part, you know. Because  
18 there's inmate workers that have told me before that when they  
19 did this, they were just told to spray over it. You know what  
20 I mean?

21           **THE COURT:** Spray the paint over it?

22           **THE PLAINTIFF:** Right.

23           **THE COURT:** Okay. So you want it clean so that you  
24 don't have --

25           **THE PLAINTIFF:** Right.

1           **THE COURT:** -- the presence of mildew and mold.

2           **THE PLAINTIFF:** Right.

3           **THE COURT:** All right. Have we discussed all of your  
4 claims that you're bringing here today?

5           **THE PLAINTIFF:** Pretty much, yeah.

6           **THE COURT:** Well, I want to make sure. When you say  
7 "pretty much," that means there might be something else. And  
8 I want to give you an opportunity to tell me about all of your  
9 claims. I mean, we've talked about the presence of mold or  
10 mildew, and we've talked about you have a tickle in your  
11 throat, sometimes you may have some breathing issue that you  
12 attribute to it. We've talked about what you want done if you  
13 win and I can provide with you relief. Is there anything  
14 about your claim, any other claims we need to talk about that  
15 you may be bringing other than mold or mildew?

16           **THE PLAINTIFF:** No. I'm just trying to see if I can  
17 find a way to aid and assist in getting it fixed, you know, so  
18 that way -- because like I said, it's not just the  
19 inmates that -- you know, don't get me wrong, this might sound  
20 bad when I say this, but some people deserve to be locked up.  
21 You know what I'm saying? And, you know, Romans 13:4 says the  
22 sword is for the evildoer, you know. But now we've got  
23 officers that work there and medical that come in, and it's  
24 just -- you know, it's like -- you know what I mean? Just...

25           **THE COURT:** All right. Thank you.

1           **THE PLAINTIFF:** You're welcome.

2           **THE COURT:** Counsel, do you have any questions?

3           **MR. GUILD:** Yes, Your Honor, just a few, if I may.

4           **THE COURT:** Go ahead.

5           **MR. GUILD:** Mr. Schaffran, my name is Patrick Guild.

6 I represent Harrison County, Mississippi. I appreciate your  
7 want to getting the -- whatever problem there is resolved; but  
8 I've got a few questions for you to make sure I understand  
9 your claim. Okay?

10          **THE PLAINTIFF:** Yeah.

11          **MR. GUILD:** You're claiming that you have been  
12 exposed to hazardous and toxic conditions caused by black  
13 mold; is that correct?

14          **THE PLAINTIFF:** Yes, sir.

15          **MR. GUILD:** And that you've been exposed to that over  
16 several months of your incarceration; is that correct?

17          **THE PLAINTIFF:** Yes, sir.

18          **MR. GUILD:** And that this black mold was on or around  
19 air vents inside air ducts, correct?

20          **THE PLAINTIFF:** Yes.

21          **MR. GUILD:** And that this black mold was in floor  
22 areas and around pipes; is that correct?

23          **THE PLAINTIFF:** Yes, sir.

24          **MR. GUILD:** Okay. And are you aware that the health  
25 department had inspected the facility?

1           **THE PLAINTIFF:** I was told that they -- that those  
2 are the people that said it was mildew.

3           **MR. GUILD:** Okay. So you're aware that they did come  
4 inspect the building, correct?

5           **THE PLAINTIFF:** Yes, sir.

6           **MR. GUILD:** And you're aware that their findings were  
7 that we had mildew, not black mold?

8           **THE PLAINTIFF:** Yes, sir.

9           **MR. GUILD:** Okay. And do you have anything to  
10 dispute their findings?

11           **THE PLAINTIFF:** No, sir. I mean, if that's what they  
12 said, that's -- you know, that's what their job is to do. You  
13 know what I mean? I can't dispute somebody with...

14           **MR. GUILD:** No further questions, Judge.

15           **THE COURT:** Okay. I don't have any additional  
16 questions.

17           Mr. Guild, do you have any prediscovery disclosures  
18 to provide?

19           **MR. GUILD:** Judge, this is a unique case in that it  
20 really does not involve his medical, it doesn't really involve  
21 his inmate records. It just involves some mold issues. I've  
22 got pictures, Your Honor, that I can -- that I have of the  
23 area, Bates-stamped 1 through 18, that I can provide him,  
24 Judge.

25           **THE COURT:** Well, you also referenced -- just to be

1 fair, you referenced that there were Department of Health  
2 inspections that said this was mildew and not mold. I mean,  
3 do you have that inspection report or inspection reports along  
4 with the dates?

5 **MR. GUILD:** I don't have that inspection report  
6 today, Judge. We've been trying to get it from Harrison  
7 County Adult Detention Center. Obviously we represent the  
8 County, and -- but I don't have those today, but I'm happy to  
9 supplement into --

10 **THE COURT:** Has it been inspected more than one time?

11 **MR. GUILD:** That I'm aware of, it gets inspected --  
12 when I say "routinely," yearly. Don't hold me to that  
13 exactly, but at least yearly, and I'm happy to try to attempt  
14 to get the relevant records to that. But again, given what  
15 was -- what we have here and based on -- I'm going to try  
16 to -- first -- second time in 15 years, I'm going to try to  
17 make a small argument before the Court before we close, if I  
18 can, at a Spears hearing.

19 **THE COURT:** Sure.

20 **MR. GUILD:** We thought that the pictures from his  
21 jail cell that were taken by personnel of the county are  
22 really the only thing that --

23 **THE COURT:** So you have pictures from just one jail  
24 cell, or various jail cells?

25 **MR. GUILD:** Judge, I believe it's the areas where he

1 was confined at the time. So his -- I do not know if they  
2 were -- he claimed that he was in three jail cells, I believe,  
3 or four in that three-month period. Excuse me, prior to  
4 that three-month period --

5 **THE COURT:** Do you know which cell those pictures are  
6 taken from, or cells?

7 **MR. GUILD:** I do not.

8 **THE COURT:** Okay. You can produce them to  
9 Mr. Schaffran.

10 **MR. GUILD:** And, Judge, the digital -- the digital  
11 copies are actually better. If we have to proceed through  
12 discovery, we'll provide him with actual digital copies.  
13 Sometimes they're a little bit more clear than when they print  
14 out the way that they do.

15 **THE COURT:** Okay. Mr. Schaffran, under the rules of  
16 court that I mentioned to you earlier, the defendant has an  
17 obligation under the rules to provide you with what we call  
18 prediscovery disclosures. And he's providing that to you  
19 because that's what the rules say he must do. There may be  
20 some additional documents that we've referenced that he may be  
21 required to produce to you as well. Okay?

22 **THE PLAINTIFF:** Yes, sir.

23 **THE COURT:** So that's what that is.

24 Mr. Guild, you referenced that you may have an  
25 argument you want to make before the Court?

1           **MR. GUILD:** Yes, Your Honor. Again, this is the only  
2 second time in probably 15 years that I'm making an argument  
3 at Spears hearing, but I've got a case that I wanted to point  
4 out to the Court. It's called *Ruffin v. Larpen*. I've got  
5 a printout of it because it's not reported in the federal  
6 supplement. It's 2019 WL 2526739. I do have a copy for Your  
7 Honor and for Mr. Schaffran. But basically the allegation in  
8 that claim was that during the incarceration over the past  
9 several months, the plaintiff in that case had been exposed to  
10 hazardous and toxic conditions caused by, but not limited to,  
11 "black mold on and around air vents inside air ducts, shower  
12 walls, and derins floors and crawlspaces and pipe chases where  
13 toxic bacteria can grow," almost identical to the allegations  
14 made here.

15           And in its review of that -- and this is taken during  
16 the Spears hearing. This was a Spears hearing report and  
17 recommendation that was ultimately affirmed -- "Courts have  
18 consistently held that the type of physical conditions  
19 plaintiff alleges are nothing more than de minimis  
20 inconveniences that do not constitute punishment or otherwise  
21 rise to the level of constitutional violations. Jurisprudence  
22 has repeatedly held that the mere fact that mold is present in  
23 a jail does not render an inmate's confinement  
24 unconstitutional. The mere fact that fungus, mold, mildew,  
25 and rust are present in a jail does not warrant relief.

1 Plaintiff's claim that the bathroom and shower area are  
2 unsanitary and contain black mold fails to rise to the level  
3 of a constitutional violation; holding that allegation of  
4 excessive amount of black mold in showers and sinks was  
5 insufficient to raise a claim for a constitutional violation."  
6 And I'm quoting this where they have multiple citations. I'm  
7 leaving the citations out. "Finding that plaintiff's  
8 complaints of the presence of black mold in living areas,  
9 eating areas, and shower areas were nothing more than a  
10 de minimis level of imposition with which the Constitution is  
11 not concerned. Plaintiff's claim that he was forced to share  
12 with other -- share a cell with other inmates is polluted and  
13 covered with mold and fungus, causing him to catch athlete's  
14 foot and ringworm, fails to rise to the level of a  
15 constitutional violation." [As read.] And so at the very end,  
16 it states: "Plaintiff's allegations, even if accepted as  
17 true, fail to cross the impermissible line that separates the  
18 unpleasant from the unconstitutional." So this was done as a  
19 Spears hearing.

20 I give you this case, Your Honor, because it quotes  
21 all the other ones. Instead of giving you a bunch of case  
22 law, sometimes it's just easier to point to one that cites the  
23 different instances.

24 **THE COURT:** What court was that, Mr. Guild?

25 **MR. GUILD:** That was the United States District



1 Court, Eastern District of Louisiana. It does cite a Southern  
2 District of Mississippi case, which is *Eaton v. Magee*.  
3 That's 2012 WL 2459398. So this court has dealt with this  
4 issue before. I just -- like I said --

5 **THE COURT:** Do you know who the magistrate judge was  
6 in the Southern District of Mississippi?

7 **MR. GUILD:** This one looks like it was -- it was  
8 in 2012. It would have been Judge Parker.

9 **THE COURT:** Do you want to present that to --

10 **MR. GUILD:** Sure. Sure.

11 **THE COURT:** -- the Court and Mr. Schaffran?

12 I think the safer course of action, Mr. Guild -- not  
13 having read the case, and since this is a Spears hearing, I  
14 think the safer course of action is to set a discovery period.

15 **MR. GUILD:** Yes, Your Honor.

16 **THE COURT:** And I think everyone can benefit by the  
17 routine inspections, and let's see what they say. It may be,  
18 I don't know, but it may be that there's a distinction between  
19 black mold. I know sometimes individuals might see a black  
20 fungus and assume that it's black mold, but to the Court,  
21 black mold may have some significance as opposed to mildew.  
22 I'd like to see the routine inspections.

23 And I want to give the plaintiff, Mr. Schaffran, an  
24 opportunity to conduct discovery --

25 **MR. GUILD:** Yes, sir.

1           **THE COURT:** -- to the extent, you know, he can avail  
2 himself of discovery. There may be facts that are pertinent  
3 to the Court's analysis.

4           But it may be that you need to file a dispositive  
5 motion. And so I think what I'm going to do is I'm going to  
6 set a 90-day period of discovery. So all discovery will be  
7 completed on or before November 12th, and then any and all  
8 dispositive motions will be filed on or before December 12th.

9           What that means, Mr. Schaffran, is you need to -- he  
10 gave you a copy of this case, so you may want to review that  
11 case and any supporting cases. I'm going to give you an  
12 opportunity to conduct discovery, as provided by the rules.  
13 And then it sound like Mr. Guild and Harrison County are going  
14 to file dispositive motions -- a dispositive motion to  
15 basically have the Court dismiss your claim. Because this  
16 goes back to where we talked about having the law and the  
17 facts. And you can have all the facts, but if you don't have  
18 the law, then you may not be able to proceed. And he's  
19 apparently making an argument, based on this case that I have  
20 not reviewed, that, okay, let's assume all your facts are  
21 true, but the law doesn't support your theory of recovery.

22           **THE PLAINTIFF:** Right.

23           **THE COURT:** All right?

24           **THE PLAINTIFF:** Yes, sir.

25           **THE COURT:** And so that's where we are. But I want

1 to give you an opportunity to conduct discovery, if you care  
2 to, and then he's going to file a motion.

3 Now, it is very important that you understand that it  
4 is your responsibility and only your responsibility to keep  
5 the court clerk advised of your mailing address. So if you  
6 get transferred or you're set free and you're back in the free  
7 world, so to speak, you've got to keep the clerk advised of  
8 your mailing address. Because from time to time we may mail  
9 orders, he may mail you a motion that requires some response,  
10 and if you don't respond, then it could likely be that your  
11 case will be dismissed. So that's your responsibility if your  
12 mailing address changes to keep the clerk advised of it at all  
13 times. Do you understand?

14 **THE PLAINTIFF:** Yes, sir.

15 **THE COURT:** Okay. Mr. Guild, is there anything we  
16 need to add on the record?

17 **MR. GUILD:** No, Your Honor. Just to make sure, are  
18 you instructing us to go ahead and give the plaintiff those  
19 reports upon -- once I have them?

20 **THE COURT:** I think since you put that in there, and  
21 it's an attachment to his complaint that there was an  
22 inspection --

23 **MR. GUILD:** Yes, Your Honor.

24 **THE COURT:** -- I think under the prediscovery  
25 disclosure rules, and it sounds like you may be attaching it

1 as an exhibit to your motion, so you might as well go ahead  
2 and give it to him now and let's flesh it out.

3 **MR. GUILD:** Yes, sir, Your Honor. We'll give it to  
4 him within no later than 30 days.

5 **THE COURT:** That will be fine.

6 **MR. GUILD:** Yes, sir.

7 **THE COURT:** Just make sure he has sufficient time to  
8 conduct discovery if that's what he wants to do.

9 Mr. Schaffran, you had a question?

10 **THE PLAINTIFF:** Yes, sir, Your Honor. Have you seen  
11 these pictures?

12 **THE COURT:** I have not.

13 **THE PLAINTIFF:** Is there any way I can get them, too,  
14 so -- and then you won't be able to tell if nothing's going on  
15 here. But, you know, it's just --

16 **THE COURT:** Well, I don't think I need to see them at  
17 this juncture.

18 **THE PLAINTIFF:** Yes, sir.

19 **THE COURT:** But apparently when y'all are conducting  
20 discovery and there's a motion filed and you have an  
21 opportunity to address his motion and say why it's not true,  
22 then I'm going to get to see it and review it all at that  
23 time. It wouldn't do me any good to see it right now, because  
24 I'm not going to make any decisions today.

25 **THE PLAINTIFF:** And not to say anything against him

1 personally, but he's not the type to be able to look at this  
2 and to know that it's incorrect as being able to see a cell  
3 wall.

4 **THE COURT:** Yeah. Well, that's going to be something  
5 y'all can argue about. And then once y'all get it all written  
6 up and everybody submits it to me, then that's when I'm going  
7 to look at it and make a decision.

8 **THE PLAINTIFF:** Yes, sir.

9 **THE COURT:** So y'all may have some discovery to take.

10 **THE PLAINTIFF:** Yes, Your Honor.

11 **THE COURT:** Which is exactly why I'm going to allot  
12 time for that. Okay?

13 **THE PLAINTIFF:** Yes, sir.

14 **THE COURT:** Anything else you want to add on the  
15 record before we close?

16 **THE PLAINTIFF:** You have a good, safe day.

17 **THE COURT:** All right. You as well. That will  
18 conclude this matter. Thank you.

19 (Hearing concluded.)

20 - - -

**CERTIFICATE OF COURT REPORTER**

I, Kati Vogt, RPR, RMR, RDR, CRR, Official Court Reporter for the United States District Court for the Southern District of Mississippi, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a correct transcript of the proceedings reported by me using the stenotype reporting method in conjunction with computer-aided transcription, and that same is a true and correct transcript to the best of my ability and understanding.

I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

s/Kati Vogt  
KATI VOGT, RPR, RMR, RDR, CRR  
OFFICIAL COURT REPORTER